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Attorneys for Plaintiff Lisa S. Black

**IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LISA S. BLACK,)	CIVIL ACTION NO. 05-0038
)	
Plaintiff,)	
)	
vs.)	
)	
JIM BREWER, individually and in his)	MOTION IN LIMINE TO
official capacity as Acting Principal for)	PRECLUDE TESTIMONY OF
Hopwood Junior High School,)	KAREN KLAVER
COMMONWEALTH OF THE NORTHERN)	
MARIANA ISLANDS PUBLIC SCHOOL)	Trial Date : February 20, 2007
SYSTEM, and JOHN AND/OR JANE DOE,)	
)	
Defendants.)	

I. Introduction.

Plaintiff, by and through counsel, hereby offers her Reply to the opposition by Defendant CNMI Public School System ("PSS") to Plaintiff's Motion to preclude the testimony of proposed defense witness Ms. Karen Klaver ("Ms. Klaver"). Because of Ms. Klaver's participation in pretrial depositions that may be offered as substantive evidence implicates ethical rules her testimony at trial is unseemly and should not be allowed. Furthermore, PSS does nothing to address the portions of Plaintiff's Motion addressing policy

1 considerations and potential prejudice to Plaintiff. This Motion, therefore, should be granted
2 despite PSS's opposition.

3 4 **II. Argument.**

5 Despite PSS's opposition, this Motion should be granted and Ms. Klaver precluded
6 from testifying.

7 8 9 ***A. Ms. Klaver, As PSS's Attorney, Should Not Act As A Witness.***

10 Whether or not Ms. Klaver's testimony at trial would implicate ethical rules (as Plaintiff
11 insists it would), her sudden transformation from attorney to advocate would be unseemly and
12 should not, therefore, be allowed. Plaintiff addressed the fact that the attorney-advocate rule
13 implicates fundamental foundations of our adversarial system.¹ PSS insists upon a mechanical
14 application of the rule that would preclude this Court's consideration of the appearance of
15 impropriety generated by Ms. Klaver acting as a witness in this case. Therefore, to avoid such
16 an appearance of propriety, Ms. Klaver should not testify.

17 18 19 ***B. Plaintiff Will Be Unfairly Prejudiced By Her Testimony.***

20 PSS also failed to address other significant concerns raised in Plaintiff's Motion In
21 Limine. First, PSS says nothing to counter the contention that the jury may be unduly
22 influenced by the testimony of a PSS *legal* representative in a *legal* proceeding. Since the risk
23 of undue influence is present, and not addressed by PSS, this Court should grant this Motion.

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27 ¹ See Plaintiff's Motion at 2.

1 Finally, it bears mention that while Plaintiff may have listed Ms. Klaver as a person
2 with potentially discoverable information, PSS did not. Relying upon this, and keeping in
3 mind that testimony by acting counsel for parties is something that should be a last resort,
4 Plaintiff did not take the deposition of Ms. Klaver. Furthermore, at what stage of litigation
5 would Ms. Klaver have stopped being an attorney and started being a witness so that Plaintiff
6 could depose her? Additionally, what information could Ms. Klaver have provided without
7 violating attorney client privilege? Finally, what would have happened had Plaintiff deposed
8 Ms. Klaver, she had declined to answer questions and then PSS waives privilege at trial to let
9 her answer the same questions posed by PSS at trial? This sudden, 11th hour transformation
10 into a witness should not be permitted.
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14 Plaintiff's Motion should be granted.

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16 Dated : February 14, 2007

Respectfully submitted,

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18 O'CONNOR BERMAN DOTTS & BANES
Attorneys for Plaintiff Lisa Black
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20 By: _____/s/_____
21 GEORGE L. HASSELBACK (F0325)
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